

August 31, 2011

MEMORANDUM TO: Honorable Mayor and City Council

THRU: Charles P. Potucek, City Manager
David J. Felix, CPA, Finance Manager

FROM: Mark C. Welch, Budget/Contracts Officer

SUBJECT: REQUEST FOR AGENDA ITEM
Resolution 2011-107 Approval of Endangered
Species Act Consultation Contract
Intergovernmental Agreement

RECOMMENDATIONS:

The Finance Manager recommends approval.
The City Manager recommends approval.

BACKGROUND:

The City of Sierra Vista and Cochise County desire to contract with Darling Environmental and Surveying to provide on-call Endangered Species Act consultation and other biological issues services.

The scope of services to be provided by Darling Environmental and Surveying includes research, report preparation, meeting attendance and other activities in regards to threatened and endangered species and other biological issues.

Darling Environmental and Surveying will prepare draft and final responses to the U.S. Fish and Wildlife Services (USFWS) on the upcoming re-issuance of proposed critical habitat and the accompanying economic analysis of the proposal to designate critical habitat for the Spikedace (*Meda fulgida*) and Loach Minnow (*Tiaroga cobitis*) in the Upper San Pedro River system.

The Intergovernmental Agreement between the City and County shares the cost of services provided at 50 percent.

BUDGET APPROPRIATIONS:

None

RESOLUTION 2011-107

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY AND COCHISE COUNTY FOR ENDANGERED SPECIES ACT CONSULTATION; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, it is the settled policy of the City Council to authorize city staff to enter into intergovernmental agreements with Cochise County for matters impacting both entities; and

WHEREAS, the City and County share responsibilities for providing comments and analyses in regards to the Endangered Species Act and other biological issues; and

WHEREAS, both Cochise County and the City desire to enter into an intergovernmental agreement stipulating the City to be responsible for fifty percent of the cost of the services provided, with the County responsible for the other fifty percent.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS;

SECTION 1

That the settled policy to enter into intergovernmental agreements with Cochise County, encouraging intergovernmental cooperation and support for services in and around Sierra Vista and the San Pedro River watershed be, and hereby is, reaffirmed.

SECTION 2

That the Mayor and City Council hereby authorizes city staff to execute an intergovernmental agreement with Cochise County for Endangered Species Act consultation cost sharing.

SECTION 3

That the City Manager, City Clerk, City Attorney or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA THIS 8TH DAY OF SEPTEMBER 2011.

FREDERICK W. MUELLER
Mayor

ATTEST:

APPROVED AS TO FORM:

JILL ADAMS
City Clerk

STUART L. FAUVER
City Attorney

PREPARED BY:
Mark C. Welch
Budget/Contract Officer



August 19, 2011

Charles P. Potucek
City Manager
1011 N. Coronado Drive
Sierra Vista, AZ 85635.

Tel: 520-458-3315

Sent via email: charles.potucek@sierravistaaz.gov

Re: Scope of Work – On Call Endangered Species Act Consultation and Other Biological Services as Assigned

Dear Mr. Potucek:

Darling Environmental & Surveying, Ltd. is pleased with the opportunity to submit this scope of work to you for obtaining approval to provide on-call Endangered Species Act Consultation Services and other Biological Services as requested on behalf of the City of Sierra Vista and Cochise County.

The scope of services proposed includes research, report preparation, meeting attendance and other activities requested by your office in regard to threatened and endangered species and other biological issues. I am also available to act as a representative of the City of Sierra Vista and Cochise County when requested, for purposes of coordination in relation to Endangered Species Act issues and other biological issues.

In the immediate future, Darling Environmental & Surveying, Ltd. proposes to prepare draft and final responses to the U.S. Fish and Wildlife Service (USFWS) on the upcoming re-issuance of Proposed Critical Habitat and the accompanying Economic Analysis of the Proposal to Designate Critical Habitat for Spikedace (*Meda fulgida*) and Loach Minnow (*Tiaroga cobitis*) in the Upper San Pedro River System and tributaries including Hot Springs and Redfield Canyons and other federal register items as assigned. The draft copy of the response will be available to you at least 10 days prior to due date to USFWS so as to provide time for input prior to finalization.

My billing rate is \$125/hour and our PhD botanist rate is \$110/hour. Mileage (vehicle and fuel) will be billed at the federal rate (currently 55.5 cents per mile). Reimbursable expenses (registration fees, document copying and other expenditures) as well as other travel expenses (meals, lodging) will be billed at cost plus 10%.

If you have any questions or require additional information, please do not hesitate to call me at (520) 298-2725.

Respectfully,
Darling Environmental & Surveying, Ltd.

/s/ Mary E. Darling

Mary E. Darling, MS, JD
Biologist/Principal Owner



City of Sierra Vista

Procurement Division

1011 North Coronado Drive
Sierra Vista, Arizona 85635
(520) 458-3315 Fax (520) 452-7025

CONTRACT FOR PROFESSIONAL SERVICES On Call Endangered Species Act Consultation

THIS AGREEMENT is made and entered into this 24th day of August, 2011, by and between the City of Sierra Vista, 1011 North Coronado Drive, Sierra Vista, Arizona 85635, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated as City, and Darling Environmental & Surveying, LTD, 9040 South Rita Road, Suite 2350, Tucson, AZ 85747, hereinafter designated as Consultant.

SPECIAL TERMS AND CONDITIONS

1. DEFINITION OF KEY WORDS USED IN THE CONTRACT.

CITY: The City of Sierra Vista, Arizona; 1011 North Coronado Drive, Sierra Vista, Arizona 85635.

CONSULTANT, CONTRACTOR: The individual, partnership, or corporation awarded this Contract by the City of Sierra Vista.

CONTRACT: The legal agreement executed between the City of Sierra Vista, Arizona, and the Contractor, specifically City of Sierra Vista Contract No. **On Call Endangered Species Act Consultation**.

MAY: Indicates something that is not mandatory but permissible.

SHALL, MUST: Indicates a mandatory requirement.

SHOULD: Indicates something that is recommended but not mandatory

WILL: Indicates an expression of intent, but is not binding.

2. TERMINATION OF CONTRACT.

2.1 This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice to the Contractor. The City at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

2.2 The City reserves the right to cancel the whole or any part of this Contract due to failure of Contractor to carry out any term, promise, or condition of the Contract. The City will issue a written ten (10) day notice of default to Contractor for acting or failing to act in any of the following:

SPECIAL TERMS AND CONDITIONS

CONTRACT On Call Endangered Species Act Consultation

Page 2 of 11

- 2.2.1 In the opinion of the City, Contractor provides personnel that do not meet the requirements of the Contract;
 - 2.2.2 In the opinion of the City, Contractor fails to adequately perform the stipulations, conditions, or services/specifications required in the Contract;
 - 2.2.3 In the opinion of the City, Contractor attempts to impose on the City, personnel, or materials, products, or workmanship which is of an unacceptable quality;
 - 2.2.4 Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;
 - 2.2.5 In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the Contract and/or gives the City a positive indication that Contractor will not or cannot perform to the requirements of the Contract.
- 2.3 Each payment obligation of the City created hereby is conditioned upon the availability of City, State, and Federal Funds which are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continuance of services herein contemplated, the Contract period for the service may be terminated by the City at the end of the period for which funds are available. The City shall notify Contractor at the earliest possible time which service will or may be affected by a shortage of funds. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.
- 3. **RECORDS.**
Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies.
- 4. **ARBITRATION.**
It is understood and agreed that no provision of the Contract relating to arbitration or requiring arbitration shall apply to or be binding upon the City except by the City's express written consent given subsequent to the execution of the Contract. However, at the City's sole option, or by other means expressly approved by the City, disputes may be resolved through arbitration, the dispute shall be resolved as provided for in A.R.S. §12-1501 et. seq. Contractor shall continue to render the services required by this Contract without interruption, notwithstanding the provisions of this section.
- 5. **INDEPENDENT CONTRACTOR.**
 - 5.1 It is understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be an employee or agent of the other party for any purpose whatsoever.
 - 5.2 Contractor understands that it is not entitled to compensation in the form of salaries, or to paid vacation or sick days by the City, and that such days do not accumulate for the use of same at a later date.
 - 5.3 Contractor understands that the City of Sierra Vista will not provide any insurance coverage to the Contractor including workmen's compensation coverage.
- 6. **EQUAL OPPORTUNITY.**
The Contractor shall at all times abide by the equal opportunity provisions of the Civil Rights Act of 1964 as amended, Executive Order 11375, and as supplemented in Department of Labor Regulations 41 CFR Part 60, and of the rules, regulations, and relevant orders of the Secretary of Labor.

SPECIAL TERMS AND CONDITIONS

CONTRACT On Call Endangered Species Act Consultation

Page 3 of 11

7. CONTRACT TERM.

The term of this Contract shall be for one year (1) year, with the option to extend for up to four (4) additional one-year periods, unless terminated, canceled, or extended as otherwise provided herein. It shall be the Contractor's responsibility to notify the Procurement Manager within ninety (90) days of Contract expiration if Contractor desires to renew for a supplemental period.

8. PATENTS, COPYRIGHTS.

All services, information, computer program elements, reports, and other deliverables which may have a potential patent or copyright value and which are created under this Contract shall be the property of the City of Sierra Vista and shall not be used by the Contractor or any other person except with the prior written permission of the Procurement Manager.

9. KEY PERSONNEL.

9.1 It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must agree to assign specific individuals to the key positions

9.2 The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the City.

9.3 If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

10. COMPENSATION AND METHOD OF PAYMENT.

10.1 In consideration of the performance of the services described in the Statement of Work, the City shall pay the Contractor the sum or amounts as set forth in the Consultant's Proposal, herein referenced and made part of, and Contractor shall charge the City only in accordance with those same amounts.

10.2 The City will pay the Contractor following the submission of itemized invoice(s) for the services rendered. No payment shall be issued prior to receipt of material or service and correct invoice.

11. COMMENCEMENT OF WORK.

The Contractor shall work only after receiving the City's Notice to Proceed from an authorized City representative. The Contractor shall complete all work to the satisfaction of the City in accordance with the Statement of Work.

12. INSURANCE.

12.1 The Contractor agrees:

12.1.1 To obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of the resulting Contract. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation, or reduction in coverage on any policy.

12.1.2 It is agreed that **the City of Sierra Vista shall be designated as Additional Insured**, and that none of these policies will be canceled or changed so as to affect this certificate until thirty (30) days written notice of such cancellation or change has been delivered to City of Sierra Vista.

12.1.3 To provide and maintain minimum insurance limits as follows:

SPECIAL TERMS AND CONDITIONS

CONTRACT On Call Endangered Species Act Consultation
Page 4 of 11

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Worker's Compensation Employer Liability	Statutory \$1,000,000
Commercial General Liability Insurance Including:	\$1,000,000 per Occurrence for Bodily Injury, Personal Injury, and Property Damage Bodily Injury and Property Damage Combined Single Limit
(1) Premises and Operations	\$2,000,000 General and Per Project
(2) Contractual Liability (including but not limited to the liability assumed under the Indemnification provisions of this contract)	Aggregate
(3) Product - Completed Operations	\$1,000,000 per Occurrence \$2,000,000 Aggregate
Commercial Automobile Liability Insurance Including:	\$1,000,000 Bodily Injury and Property Damage
(1) Owned	
(2) Non-Owned	
(3) Leased	
(4) Hired Vehicles	
Umbrella/Excess Liability Insurance (Applies excess of primary Commercial General, Automobile, and Employers Liability policies)	\$1,000,000 per Occurrence for Bodily Injury, Personal Injury, and Property
Professional Liability Insurance (Errors/Omissions) (Professional Services Only)	\$1,000,000 per Claim \$2,000,000 All Claims

12.2 Contractor shall present to the City **written evidence** (Certification of Insurance) of compliance with all requirements of Section 12.1 above. Said evidence shall be to the City Procurement Manager's satisfaction.

12.3 It shall be considered a material breach if the Contractor fails to maintain insurance coverage as detailed above, to include the City designated as Additional Insured, and shall, at the sole discretion of the City, be grounds for immediate termination of the Contract.

13. COOPERATIVE USE OF CONTRACT.

In addition to the City of Sierra Vista, and with approval of the Contracted Vendor, this Contract may be extended for use by other municipalities, school districts, and governmental agencies of the state. Any such usage by other entities must be in accordance with the city code, charter, and/or procurement rules and regulations of the respective governmental entity.

STANDARD TERMS AND CONDITIONS

CONTRACT On Call Endangered Species Act Consultation Page 5 of 11

1. CERTIFICATION.

By signature in the offer section of the Offer and Acceptance page Consultant certifies:

- 1.1 The submission of the offer did not involve collusion or other anti-competitive practices.
- 1.2 The Consultant has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response. Failure to provide a valid signature affirming the stipulations required by this clause shall result in the rejection of the offer. Signing the offer with a false statement shall void the offer and any resulting contract, and may be subject to legal remedies provided by law.
- 1.3 The Consultant submitting the offer hereby certifies that the individual signing the proposal and/or Contract is an authorized agent for the Consultant and has the authority to bind the Consultant to the Contract.

2. GRATUITIES.

The City may, by written notice to the Contractor, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or making of any determinations with respect to the performing of such Contract. In the event this Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

3. APPLICABLE LAW.

This Contract shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted by the State of Arizona, except as otherwise provided in this Contract or in laws pertaining specifically to the City. This Contract shall be governed by the law of the State of Arizona and suits pertaining to this Contract shall be brought only in Federal or State courts in the State of Arizona.

4. COMPLIANCE WITH FEDERAL AND STATE LAWS:

The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

STANDARD TERMS AND CONDITIONS

CONTRACT On Call Endangered Species Act Consultation Page 6 of 11

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

Neither the Contractor nor any of Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

5. **LEGAL REMEDIES.**

All claims and controversies shall be subject to the Code of the City of Sierra Vista and Statutes of the State of Arizona.

6. **CONTRACT.**

The Contract shall be based upon Scope of Work Submitted August 19, 2011 (Attached) and also include federal coordination in regards to other biological issues as requested by the City of Sierra Vista. The Contract shall substantially conform to the terms and conditions, specifications and other requirements set forth within the text of the Request for Not-to-Exceed Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor. However, any substantial non-conformity in the response, as determined by the City's Procurement Manager, shall be deemed non-responsive and the offer shall be rejected. The Contract shall contain the entire agreement between the City of Sierra Vista and the Contractor relating to this requirement and shall prevail over any and all provisions agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

7. **CONTRACT AMENDMENTS.**

This Contract shall be modified only by a written Contract Amendment signed by the Procurement Manager and persons duly authorized to enter into contracts on behalf of the Contractor.

8. **PROVISIONS REQUIRED BY LAW.**

Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

9. **SEVERABILITY.**

The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

10. **RELATIONSHIP OF PARTIES.**

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. The Contractor is

STANDARD TERMS AND CONDITIONS

CONTRACT On Call Endangered Species Act Consultation

Page 7 of 11

advised that taxes or Social Security payments shall not be withheld from a City payment issued hereunder and that Contractor should make arrangements to directly pay such expenses, if any.

11. **INTERPRETATION - PAROL EVIDENCE.**

This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

12. **ASSIGNMENT - DELEGATION.**

No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of Contractor shall be made without prior written permission of the City's Procurement Manager. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position within 15 days of receipt of written request by the Contractor.

13. **SUBCONTRACTS.**

No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/services specified herein without the advance written approval of the City's Procurement Manager. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the Subcontractor were the Contractor referred to herein. The Contractor is responsible for Contract performance whether or not subcontractors are used. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position within 15 days of receipt of written request by the Contractor.

14. **RIGHTS AND REMEDIES.**

No provision in this document or in the Consultant's proposal shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services under the obligations imposed by this Contract or by law, shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

15. **WARRANTIES.**

Consultant warrants that all material or services delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or services specified and any inspection incidental thereto by the City, shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.

16. **INDEMNIFICATION.**

Consultant shall indemnify, defend, and hold harmless the City from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any reasonable attorney's fees and/or litigation expenses, which may be brought or made against any person, caused by, arising out of, or contributed to, in part, by reasons of negligent acts, omissions, professional errors, fault or mistake of the Consultant, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incidental to the performance of this agreement, or arising out of Worker's Compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of the Consultant and/or its subcontractors or claims under similar such

STANDARD TERMS AND CONDITIONS

CONTRACT On Call Endangered Species Act Consultation

Page 8 of 11

laws or obligations. The Consultant's obligation under this section shall not extend to any liability caused by the sole negligence of the City or its employees. For any liability caused jointly by the Consultant and the City of Sierra Vista, the Consultant shall be held liable only for the Consultant's negligent acts, errors, or omissions.

17. **OVERCHARGES BY ANTITRUST VIOLATIONS.**

The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.

18. **FORCE MAJEURE.**

18.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence.

18.2 Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

18.3 If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as practicable, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract modification for a period of time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

19. **RIGHT TO ASSURANCE.**

Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within ten (10) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

20. **ADVERTISING.**

Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the City.

21. **RIGHT TO INSPECT.**

The City may, at reasonable times, and at the City's expense, inspect the place of business of a contractor or subcontractor which is related to the performance of any contract as awarded or to be awarded.

22. **INSPECTION.**

All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance shall conform to the cancellation clause set forth in this document.

23. **EXCLUSIVE POSSESSION.**

All services, information, computer program elements, reports and other deliverables which may be created under this Contract are the sole property of the City of Sierra Vista and shall not be used or released by the Contractor or any other person except with prior written permission of the City.

STANDARD TERMS AND CONDITIONS

CONTRACT On Call Endangered Species Act Consultation

Page 9 of 11

24. **TITLE AND RISK OF LOSS.**

The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

25. **NO REPLACEMENT OF DEFECTIVE TENDER.**

Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender. Noncompliance shall conform to the cancellation clause set forth within this document.

26. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH.**

Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute non-conforming materials. Delivery of non-conforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole. Noncompliance shall conform to the cancellation clause set forth within this document.

27. **LIENS.**

All materials, services and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest held by the Contractor until payment in full is made by the City. Upon request of the City, the Contractor shall provide a formal release of all liens.

28. **PAYMENT.**

A separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice.

29. **LICENSES.**

Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the contractor as applicable to this Contract.

30. **PUBLIC RECORD.**

All proposals submitted in response to this request shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification.

31. **TERMINATION BY THE PROCUREMENT MANAGER.**

The City may cancel this Contract without penalty or further obligation pursuant to A.R.S §38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a consultant to any other party to this Contract with respect to the subject matter of the Contract. Such cancellation shall be effective when written notice from the Procurement Manager is received by the parties to this Contract, unless the notice specifies a later time.

PRICE SHEET

CONTRACT On Call Endangered Species Act Consultation
Page 10 of 11

Based upon letter dated August 19, 2011

	<u>Description</u>	<u>Rate</u>
1.	Biologist/Principal Owner	\$125/Hour
2.	PhD Botanist	\$110/Hour
3.	Mileage (Vehicle and Fuel)	\$0.55/Mile
4.	Reimbursable Expenses	Cost Plus 10%

Signature

Printed Name

Title

OFFER AND ACCEPTANCE

CONTRACT On Call Endangered Species Act Consultation
Page 11 of 11

OFFER

TO THE CITY OF SIERRA VISTA

The undersigned hereby offers and agrees to furnish the material or service in compliance with all terms, statement of work, conditions, specifications, and amendments of this Contract and the Scope of Work Submitted August 19, 2011 (Attached) and also include federal coordination in regards to other biological issues as requested by the City of Sierra Vista, herein referenced and made part of. Signature also certifies understanding and compliance with paragraph 1 of the City of Sierra Vista Standard Terms and Conditions.

State of Arizona Transaction (Sales) Privilege Tax

License No.: _____

Federal Employer Identification

No.: _____

Phone: _____

Darling Environmental & Surveying

Company Name

Signature of Person Authorized to Sign Contract

9040 South Rita Road, Suite 2350

Address Printed Name

Tucson

City

AZ

State

85747

Zip

Title

ACCEPTANCE OF OFFER

The offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached Contract and based upon the Scope of Work Submitted August 19, 2011 (Attached) and also include federal coordination in regards to other biological issues as requested by the City of Sierra Vista, including all terms, conditions, specifications, statement of work, amendments, etc., and the Contractor's Offer as accepted by the City.

This Contract shall henceforth be referred to as On Call Endangered Species Act Consultation. The Contractor has been cautioned not to commence any billable work or to provide any material or service under this Contract until Contractor receives a formal Notice to Proceed, Purchase Order, or is otherwise directed to do so in writing by the undersigned.

City of Sierra Vista, a municipal corporation.

Awarded this 24th day of August, 2011

Approved as to form:

D. Michael Clawson

As City of Sierra Vista Procurement Manager and not personally

Stuart L. Fauver

As City of Sierra Vista City Attorney and not personally

Attest:

Jill Adams

As City of Sierra Vista City Clerk and not personally